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Claims 2-3, 13, 15-17, and 26-32 are canceled without prejudice to their continued prosecution in a continuation and/or divisional application.

The amendments to independent claim 1 are fully supported by canceled claims 2 and 3 and by the description in the specification. The amendments to independent claim 14 are fully supported by canceled claims 15-17 and by the description in the specification. The amendments to dependent claims 4-12 and 18-25 were made for clarification and/or to change dependencies in view of canceled base claims. No new matter has been added. Upon entry of this Response, claims 1, 4-12, 14, and 18-25 are present and active in the application.

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## REMARKS

**Claim Rejections – 35 U.S.C. § 112**

The rejection of claims 2-4, 7, 9-12, 15-17, 20, and 22-25 under 35 U.S.C. § 112, second paragraph, as being indefinite has been obviated by appropriate amendment. Accordingly, withdrawal of this ground of rejection is respectfully requested.

**Claim Rejections – 35 U.S.C. § 102**

1. The rejection of claims 1, 2, 4, 7, 9-12, 14-15, 17, 20, and 22-25 under 35 U.S.C. § 102(b) as being anticipated by *Rodriguez et al.* (U.S. Patent No. 6,228,652 B1) has been obviated by amendment.

Independent claim 1—presently rewritten to incorporate canceled claim 3 (a claim that was not rejected on the basis of *Rodriguez et al.*)—recites a sample preparing portion configured for preparing an assay sample comprising a reagent that comprises “carrier particles sensitized with an antibody or an antigen against a target substance in [a] blood specimen.” Independent claim 14—presently rewritten to incorporate claim 16 (a claim that was not rejected on the basis of *Rodriguez et al.*)—recites a sample preparing portion configured for adding a first reagent comprising “carrier particles sensitized with an antibody or an antigen against a target substance in [a] whole blood specimen,” and a second reagent comprising “a fluorescent dye for staining blood cells.”

*Rodriguez et al.* describes an apparatus for analyzing cells in a whole blood sample and—at a minimum—contains no teaching or suggestion of a sample preparing portion configured as required by either of independent claim 1 and independent claim 14. Thus, Applicant respectfully submits that the claimed invention is neither anticipated by nor would have been obvious in view of this reference. Accordingly, withdrawal of this ground of rejection is respectfully requested.

2. The rejection of claims 1-3, 5-6, 8, 11, 14-16, 18-19, 21, and 24 under 35 U.S.C. § 102(b) as being anticipated by the English abstract of *Shingo* (JP B6-19349) is respectfully traversed.

Independent claim 1 recites "an analyzing portion where blood cell counting...[is] carried out based on... optical information detected by [a] light detector" (emphasis added). Independent claim 14 recites "an analyzing portion, wherein...blood cell counting is performed based on...optical information detected from [a] counting sample" (emphasis added).

The English abstract of *Shingo*—a reference previously described in Applicant's specification (e.g., page 4, line 4 to page 5, line 9)—describes an apparatus for analyzing a serum but, at a minimum, contains no teaching or suggestion that the serum to be examined includes blood cells. Applicant respectfully submits that the representation in the Office Action (page 8) that the non-agglutinated single particles described in the English abstract of *Shingo* are "blood cells" is not substantiated by the citation. On the contrary, the English abstract of *Shingo* contains no teaching or suggestion of the analyzing portion required by either of independent claim 1 and independent claim 14. Thus, Applicant respectfully submits that the claimed invention is neither anticipated by nor would have been obvious in view of this reference. Accordingly, withdrawal of this ground of rejection is respectfully requested.

3. The rejection of claims 1-3, 5-11, 14-16, and 18-24 under 35 U.S.C. § 102(b) as being anticipated by *Oku et al.* (U.S. Patent No. 6,106,778) is respectfully traversed.

As noted above, independent claim 1 recites "an analyzing portion where blood cell counting...[is] carried out based on...optical information detected by [a] light detector" (emphasis added). As further noted above, independent claim 14 recites "an analyzing portion, wherein...blood cell counting is performed based on...optical information detected from [a] counting sample" (emphasis added).

*Oku et al.*—a reference previously described in Applicant's specification (e.g., page 5, lines 10-23)—describes a blood cell count/immunoassay apparatus using whole blood. However, the analyzer described in *Oku et al.* counts blood cells based on electrical information (i.e., an electric resistance method; col. 4, lines 18-22) rather than optical information. For example, *Oku et al.* describes that measuring electrodes 27a and 27b are for measuring WBC (white blood cell count), whereas light receiving

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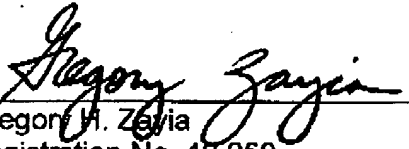
section 27d is for measuring Hgb (hemoglobin concentration) (e.g., col. 4, lines 24-28). However, hemoglobin concentration is not blood cell count. At a minimum, *Oku et al.* contains no teaching or suggestion of the analyzing portion required by either of independent claim 1 and independent claim 14. Thus, Applicant respectfully submits that the claimed invention is neither anticipated by nor would have been obvious in view of this reference. Accordingly, withdrawal of this ground of rejection is respectfully requested.

**Conclusion**

In view of the Amendment and Remarks set forth above, Applicant respectfully submits that the claimed invention is in condition for allowance. Early notification to such effect is earnestly solicited.

If for any reason the Examiner feels that the above Amendment and Remarks do not put the claims in condition to be allowed, and that a discussion would be helpful to advance prosecution, it is respectfully requested that the Examiner contact the undersigned agent directly at (312)-321-4257.

Respectfully submitted,

  
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